

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESAU ROGERS,
CDC# P-54800

Plaintiff,

v.

S. RIVAS, et al.,

Defendants.

Case No. 07-CV-2010-W (JMA)

**REPORT AND RECOMMENDATION
RE: PLAINTIFF'S MOTION TO STRIKE
DEFENDANT RIVAS' ANSWER TO
FIRST AMENDED COMPLAINT**

[Doc. No. 40]

Plaintiff Esau Rogers, a state prisoner at Centinela State Prison, brings this case under 42 U.S.C. § 1983, alleging that Defendants violated his civil rights by improperly searching his cell in retaliation for previous grievance claims.¹ The operative pleading is his First Amended Complaint which, after the Court granted in part and denied in part Defendants' motion to dismiss, is now pending as to one defendant – Defendant S. Rivas. (Doc. No. 32.) Rivas filed an Answer to the First Amended Complaint. (Doc. No. 33.) Plaintiff thereafter filed a motion to strike Rivas' Answer to the First Amended Complaint. (Doc. No. 40.) Rivas opposes the motion. (Doc. No. 41.) Pursuant to Civ.LR 72.3.4 and 28 U.S.C. § 636(b)(1), Plaintiff's motion has been referred for report


¹ The facts and legal standards are set forth in detail in this Court's prior Report and Recommendation [Doc. 19] ("12/23/08 Report") and Order adopting the Report [Doc. 21] ("3/30/09 Order").

1 and recommendation. As set forth below the undersigned **RECOMMENDS** the motion
 2 be **DENIED**.

3 Plaintiff's motion seeks to strike any portion of Rivas' Answer that is "deemed
 4 moot, irrelevant, or dilatory." (Doc. No. 40-1, p. 5, see also p. 8 & 9.) Fed. R. Civ. P.
 5 12(f) permits a court to strike from a pleading an insufficient defense or any redundant,
 6 immaterial, impertinent or scandalous matter. As required by Fed. R. Civ. P. 8(b)(2), (3)
 7 and 8(c), Rivas' Answer specifically admits or denies the allegations made in the First
 8 Amended Complaint that survived the motion to dismiss and asserts affirmative
 9 defenses thereto. (Doc. No. 41.) Upon review, the Court does not find any insufficiently
 10 pled defenses or any redundant, immaterial, impertinent or scandalous matter that
 11 would warrant striking the pleading. The undersigned, therefore, **RECOMMENDS** that
 12 the Court issue an Order **DENYING** Plaintiff's Motion to Strike.

13 This Report and Recommendation is submitted to the Honorable Thomas J.
 14 Whelan, United States District Judge, pursuant to the provisions of 28 U.S.C. §
 15 636(b)(1). Any party may file written objections with the Court and serve a copy on all
 16 parties on or before **May 28, 2010**. The document should be captioned "Objections to
 17 Report and Recommendation." Any response to the Objections shall be served and
 18 filed on or before **June 7, 2010**. The parties are advised that failure to file objections
 19 within the specified time may waive the right to appeal the district court's order.
 20 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: May 10, 2010

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 23 Jan M. Adler
 24 U.S. Magistrate Judge
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